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Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the Al-Haq, Law in the Service of Man, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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Israel's Recent Codification of Racism against Palestinians and Escalation of its Annexation of the Occupied Palestinian Territory Require Human Rights Council Engagement to Uphold an Effective Agenda Item 7••

For over 70 years, Israel has created a regime of systematic racial discrimination against Palestinians, denying refugee return, and pursuing the continued expulsion of Palestinians from their land. Meanwhile, Israel has entrenched its control over Palestine and its natural resources, expanding settlements in the occupied Palestinian territory (oPt), expropriating land, demolishing and confiscating property, and creating coercive environments to force Palestinians out. Over the past five decades of Israel's military occupation, successive Israeli Governments have adopted and implemented laws, policies, and practices aimed at annexing occupied territory whether *de jure*, such as the annexation of East Jerusalem and of the occupied Syrian Golan, or *de facto*, as is the case in Area C of the West Bank, where Israel's control has become a permanent state of affairs.

Israel's recent practices can be characterized by two trends: an intensified attempt to match the legal reality with the imposed facts on the ground, moving from *de facto* annexation towards *de jure* annexation; and a concerted effort to effectively blur the Green Line. These trends have been strongly articulated in primary Israeli legislation, military orders, and official State policies, denying Palestinians their right to self-determination amongst other fundamental rights. This submission focuses on Israel's most recent attempts to annex the oPt and argues that, in light of the alarming escalations, it is imperative to maintain Item 7 on the agenda of the Human Right Council, to ensure the effective protection of the occupied Palestinian population.

1. Basic Law: Israel as the Nation-State of the Jewish People

Enacted by Israel's Parliament (the Knesset) on 18 July 2018, the Basic Law: Israel as the Nation-State of the Jewish People, grants Jews superiority over all other citizens or residents, codifying decades of institutionalised racism against Palestinian citizens of Israel. The Law further makes it a constitutional obligation on the State to uphold the discriminatory policies and practices it has held against Palestinians since 1948. Indeed, the Basic Law recognizes the right to self-determination in Israel as exclusive for Jewish-Israelis and reiterates that "unified Jerusalem", encompassing occupied East Jerusalem and annexed West Jerusalem, is the capital of Israel. The Basic Law also strips the Arabic language of its official status, threatening to exacerbate an existing reality where Arabic has been systematically marginalized in Israeli governmental and public offices. While the discriminatory policies that the Law endorses have been implemented for decades, this Basic Law affords them with a constitutional protection. In addition, the Basic Law encourages and promotes the continued development of illegal Israeli settlements in the oPt, which are considered of Israeli national interest, despite the fact that they amount to unlawful forcible transfer, a grave breach of the Fourth Geneva Convention, and a war crime.1

2. Administrative Affairs Courts Law (Amendment No. 117)

Adopted by the Israeli Parliament on 18 July 2018, Amendment No. 117 to the Administrative Affairs Courts Law, which comes into force three months after its enactment, transfers the exclusive jurisdiction over petitions from the oPt, including on issues concerning freedom of movement within the West Bank, planning and construction in Area C, and Freedom of Information Law requests, from Israel's High Court of Justice to the Israeli Administrative Affairs Court in Jerusalem. Advanced by Israel's Justice Minister, Ayelet Shaked, the amendment seeks to normalize Israel's *de facto* annexation of Area C and the illegal presence of Israeli settlers therein, who, in addition to Palestinians, may petition the Court in Jerusalem. As a result, this amendment to the Law undermines the applicability of international humanitarian law and the laws of belligerent occupation in court proceedings as well as the possibility for Palestinians to argue in favour of their property rights and the illegality of settlement construction and expansion in the oPt.

The Administrative Affairs Court in Jerusalem, which will receive petitions submitted by Palestinians from Area C is intended to examine them in a largely procedural manner and will mainly rely on domestic Israeli law to settle issues of land, construction, planning, and cases of demolitions, altogether amounting to annexation. In doing so, Israel disregards the status of occupied territory for Area C as part of the West Bank in its domestic legal system, and extends to it the application of its domestic laws. Approving the transfer of the jurisdiction to look into oPt petitions to the

1 Articles 49 and 147, Fourth Geneva Convention. Article 8(2)(a)(vii), Rome Statute of the International Criminal Court.

Administrative Affairs Court in Jerusalem will significantly hamper, both financially and procedurally, the access of Palestinian victims to justice and effective remedies.

3. Entry into Israel Law (Amendment No. 30)

Approved by Israel's Parliament on 7 March 2018, Amendment No. 30 to the Entry into Israel Law grants the Minister of Interior (MoI) the power to revoke the permanent residency status of Palestinians in occupied East Jerusalem on the ground of "breach of allegiance" to the State of Israel.2 The Amendment further gives the MoI the broad discretion to establish what constitutes an act of "breach of allegiance," putting Palestinians in East Jerusalem at risk of having their permanent residency status arbitrarily revoked.

4. Military Order 1797

Military Order 1797, adopted on 17 April 2018 by Israel's Coordinator of Government Activities in the Territories, aims to expedite the forcible transfer of Palestinians within and from Area C and allow for increased settlement expansion and annexation. The Order expands the arbitrary powers granted to the Israeli Civil Administration to remove or demolish new structures built without Israeli permits in Area C, and as such legitimises Israel's already notorious policy of house demolitions in the oPt. The Order also effectively voids any genuine and effective possibility for Palestinian property owners to challenge demolition orders. According to the Order, the demolition can only be avoided where the owner is able to present, within 96 hours of the issuance of the demolition order, a master plan covering the structure. Such master plans and building permit requests are largely not granted to Palestinians in Area C, given Israel's discriminatory planning and zoning. As such, the Order denies Palestinians their right to a fair trial, to genuine due process, and the ability to legally challenge demolition orders. Although intended to enter into force on 19 June 2018, Military Order 1797 was challenged in Israel's High Court of Justice and has been temporarily frozen.3

5. The Need to Maintain Item 7 on the Human Rights Council's Agenda

Israel's prolonged occupation of the Palestinian territory, embodied in repressive practices, policies, and legislation, continues to deny Palestinians their right to self-determination, including return of refugees, and full equality, amongst numerous others. Member States of the Human Rights Council must act against Israel's annexationist and colonial belligerent occupation of the oPt and the occupied Syrian Golan, including by maintaining an effective Agenda Item 7, to uphold their responsibilities as third States. Especially at this daunting stage of accelerated annexation steps, Item 7 is of vital necessity to ensure that Israel abides by its obligations as an occupying power to protect the rights of the occupied Palestinian people.

In the current context, Item 7 remains one of the only avenues to address Israel's impunity, its deliberate disregard for international law, and its unwillingness to cooperate with United Nations mechanisms and implement binding resolutions. Finally, Item 7 is a necessary platform to incorporate the work and recommendations of civil society organizations, especially in light of increased restrictions and attacks against them, including restrictions on freedom of movement, physical threats, harassment, defamation, and stigmatisation.

In light of the above, the undersigned organisations call upon Member States of the Human Rights Council to:

i. Abide by their responsibilities as third States not to recognise as lawful Israel's annexation of Jerusalem, including occupied East Jerusalem, and of the occupied Syrian Golan, and its attempts to annex further occupied Palestinian territory, in violation of the prohibition on the acquisition of territory by force;

ii. Abide fully by their obligation of non-assistance in the maintenance of the illegal situation created by Israel, including by withdrawing all embassies from Jerusalem and refraining from relocating their missions thereto;

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2 "Punitive Residency Revocation: the Most Recent Tool of Forcible Transfer" (17 March 2018): http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/1201-punitive-residency-revocation-the-most-recent-tool-of-forcible-transfer; "Urgent Appeal: Israel Must Suspend and Repeal Recent Legislation Allowing for the Revocation of Permanent Residency Status from Palestinians in Jerusalem for 'Breach of Allegiance'" (8 March 2018): http://www.alhaq.org/advocacy/targets/third-party-states/1196-urgent-appeal-israel-must-suspend-and-repeal-recent-legislation-allowing-for-the-revocation-of-permanent-residency-status-from-palestinians-in-jerusalem-for-breach-of-allegiance.

3 "Temporary Freeze of New Military Order Escalating Demolitions in Areas C" (21 June 2018): http://www.saintyves.org/news/temporary-freeze-of-new-military-order-escalating-demolitions-in-areas-c.html.

iii. Cooperate to ensure that Israel rescinds its racist Nation-State Law along with the myriad of discriminatory laws, policies, and practices depriving Palestinians of their fundamental rights, and compel Israel to bring to an end its 51-year occupation of the Palestinian territory;

iv. Actively participate and maintain an effective and lively Agenda Item 7 to ensure commitment to the application of international law and human rights in the oPt, in light of the ongoing escalations.

**The Society of St. Yves – Catholic Center for Human Rights, Jerusalem Legal Aid and Human Rights Center (JLAC), Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ), and Community Action Center (Al-Quds University), NGOs without consultative status, also share the views expressed in this statement.